

## **Response to 'Improving the use and discharge of planning conditions' consultation**

Department for Communities and Local Government

19 March 2010

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### **Introduction**

The Landscape Institute (LI) is an educational charity and chartered body responsible for protecting, conserving and enhancing the natural and built environment for the benefit of the public. It champions well-designed and well-managed urban and rural landscape. The LI's accreditation and professional procedures ensure that the designers, managers and scientists who make up the landscape architecture profession work to the highest standards. Its advocacy and education programmes promote the landscape architecture profession as one which focuses on design, environment and community in order to inspire great places where people want to live, work and visit.

### **General comments on proposed revisions to Circular 11/95**

The Landscape Institute wishes to make the strongest possible representations with regard to the omission of landscape and tree issues as special cases in the proposed revisions to Circular 11/95. This Circular has been of special importance and value in ensuring that landscape and tree-related issues are dealt with effectively by local planning authorities exercising their development management functions.

Crucially, it recognised the special nature of addressing the provision and establishment of living, organic elements that make up soft landscape (including topsoil) and the role that the planning system can and, in many cases, must play in ensuring quality of delivery and outcome. It also distinguished between hard and soft landscape with explicit reference to examples of the elements that comprise the former.

It highlighted the requirement for landscape design to be submitted for approval and for this to include sufficient detailed information to provide a high degree of certainty on what could be expected from a landscape design scheme at completion. Most importantly, the required detail to be submitted included a specification for soft landscape work. This establishes the quality and methodology of workmanship, preparation, supply and handling of materials and other variables that, together or separately, will determine the successful delivery of a landscape scheme – or not.

The separation of conditions relating to landscape design and landscape implementation to reflect the different requirements of these phases was first introduced in 11/95. When used in combination with the specification requirement, this enables a local planning authority to enforce the expected quality outcomes indicated on approved drawings. This has resulted in significant improvements to landscape schemes on the ground and remains as a vital, and exceptional, contribution that planning makes in terms of quality control. In other building work, Building Regulations and other construction standards can be relied upon for this but in soft landscape matters, the planning system is of critical importance.

Essentially, it needs to be explicitly stated to and understood by all concerned interests that landscape quality, and particularly soft landscape, is highly dependent on a variety of inputs by different parties. It is inherent in the nature of dealing with living things (as opposed to bricks and mortar) that there is considerable scope for error, omission, incompetence or negligence in the procedures that need to be followed in landscape operations. These include the protection of existing vegetation and habitats, and the creation of appropriate conditions for the supply, handling and aftercare of living material to ensure survival and healthy growth. Incentives to cut corners will inevitably arise from time or cost constraints. There is a real risk of significantly reducing quality in landscape works whilst apparently complying with approved drawings. The results may only be apparent long after a development is completed, leaving little or no scope for effective remedial action through enforcement by the local planning authority. Frequently, there is no incentive, vested interest or mechanism for other parties to take remedial action. There are clear difficulties for a planning authority to intervene effectively to remedy defective landscape works on a partially completed and occupied housing scheme. The drafting of Circular 11/95 recognised these risks and responded to them in its supporting text and in its model conditions.

The supporting text in Circular 11/95 goes into some detail to explain why and how landscape treatment is a special case. Reference should be made in particular to Sections 49 and 50 of the Circular. Generally speaking, approval of detailed landscape design needs to be completed prior to commencement of development and landscape implementation completed prior to occupation. Exceptions to this should be justified for these to be agreed by the local planning authority on a case by case basis.

Circular 11/95 incorporates a footnote that the model conditions on landscape and trees were based upon submissions from the Hampshire Local Government Landscape Group. These submissions, which in fact stressed the content of sections 25, 26 and 27 more than 28-30 as referred to, reflected the concerns and principles of the Landscape Institute at the time regarding the prevalence of poor quality landscape provision and landscape implementation failing to match expectations or intentions. Circular 11/95 responded to these issues with significant beneficial results. The current proposed revision raises the likelihood that these benefits will be lost along with the rationale in the supporting text that addressed them.

An indication of this risk may be found in the currently proposed revision to the Landscape Implementation condition by PINS, which combines a number of unrelated conditions with the original, thus apparently misunderstanding the fundamental issues addressed in Circular 11/95.

The Landscape Institute would also wish to take this opportunity to make a special plea regarding terminology. The use of the word 'landscaping' is considered inappropriate. The preferred terms would be 'landscape treatment', 'landscape design' or 'landscape implementation' according to context.

## **Specific Comments on Part 2**

The six tests for Conditions, as set out in CO2.2 are fully supported.

CO4.2. Reference is made here to tree preservation being the "subject of specific control elsewhere in planning legislation". Whilst this most certainly applies in the case of Tree Preservation Orders and Trees in Conservation Areas, there is great reliance in the planning system on the proper use of conditions to protect trees from damage during construction or other development-related operations and their after-effects. The application of TPOs is constrained by law, regulation, custom and practice guidance and resources. Exceptionally within the planning system, conditions are used to establish standards, based on British Standards 5837 and 3998, for the surveying, protection and management of trees that are of importance but which may not warrant the application of a TPO, particularly if the risk is solely associated with development. It will be appreciated also that the granting of planning permission will over-ride a TPO in the case of conflict.

CO4.3 The government has expressed its commitment elsewhere to high standards of design including landscape and open space, the importance of the natural environment, and the contributions that green infrastructure (and specifically trees and veteran trees) can make to climate change adaptation and sustainable communities. It therefore seems inappropriate for decisions on whether conditions on such matters are needed in any particular case to be left potentially to sometimes over-stretched and inexperienced local authority planners, without supportive and explanatory guidance from central government (as is included in Circular 11/95). The tenor of the draft document would tend to discourage the use of conditions in most cases.

CO5.1 The application of conditions relating to the effects of development rather than its own features is likely to be of increasing importance in respect of encouraging low carbon use and adapting to climate change. It would be helpful for there to be examples provided.

CO6 The rationale behind having separate landscape design and landscape implementation conditions (and incorporating a requirement for specifications and other detailed documents to be submitted for approval) was to enable sequential discharge at appropriate stages and to enable enforcement of quality control at delivery stage, prior to occupation in most cases.

CO18 Option B is preferred, allowing conditions restricting development contingent on a planning obligation in exceptional circumstances.

CO23 The use of conditions precedent is often an essential requirement in the case of landscape, heritage and tree protection matters. These may require detailed survey information, approval of protection measures and implementation of the same prior to any works being carried out (including potentially destructive site

investigation works). It is reasonable for the viability of protection measures and landscape treatment proposals to be demonstrated and supported by sufficient evidence to provide assurance of delivery prior to the commencement of works that may otherwise compromise the protection or proposals. For example, the location and design of underground and overhead utility services and the design of building foundations is a frequent constraint on tree planting. It is unlikely that a planning authority would take enforcement action requiring major reconstruction works to accommodate proposed trees if they were so compromised. This should therefore be referred to explicitly as requiring special consideration.

CO24 The use of conditions restricting occupation or use is similarly essential to act as an incentive to implement landscape works to the expected quality as indicated in the approved submitted documents. It is extremely difficult for a local authority to take effective enforcement action on matters of landscape quality following occupation. In the case of speculative development, a social justice issue is raised where enforcement action might only be taken against an unwitting new occupier rather than the original developer. Failure to exercise such restrictions on occupation or use has in the past encouraged some unscrupulous developers to cut costs by reducing the quality of landscape-related work (the consequences of which will often not be apparent in the short term) or failing to carry out significant approved design proposals. Without the safeguard of an undischarged condition to warn prospective purchasers or occupiers, there remains no check in the system and little practicable remedy. Landscape and tree issues should therefore be explicitly referred to in the new guidance as requiring special consideration here.

## **Part 6 Specific Impact tests**

### **Sustainable development, carbon assessment, other environment**

The Landscape Institute disagrees that the proposals will help to deliver sustainable development in a timely fashion by removing delays from the planning process. The proposals may well remove delays, but it is feared that, in many cases, this will result in development that is less sustainable. The planning, layout, design and management of landscape is a key sustainability issue. It can make a major contribution to reducing energy demands, adapting to climate change and providing cleaner, safer, greener places in which people can live and work. The provision for green infrastructure in new development is a recent example of the government's often expressed commitment to high standards of design for both buildings and spaces and for these to be sustainable.

Landscape elements, whether existing or new, are inherently very vulnerable. It is a matter of fact that the provision of good quality and appropriate landscape treatment is often highly dependent on the planning system for delivery. It is often not viewed as relevant, integral or essential to development by many land owners, managers or developers whose primary operational purpose lies elsewhere.

Circular 11/95 recognised this and drew attention to landscape as a special case requiring well-informed and robust planning intervention to achieve a good quality outcome. Both its supporting text and its model conditions have proved very effective and do not appear to have been unduly criticised by the development industry. The current proposed revision is, at best, silent on this and, at worst, risks undermining this principle. Representatives of the Landscape Institute would welcome an opportunity to discuss these matters further with representatives from CLG.

The Landscape Institute strongly recommends the insertion of wording from Sections 49 and 50 from the present Circular in any revision. It would also wish to see the principles expressed here and referred to in other relevant government guidance on design, landscape, trees and the natural environment to be reflected in any final document.

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**For any queries relating to this response, or for future consultations, please contact:**

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